

REMARKS

Reconsideration of this application, as amended, is respectfully requested. Claims 1, 15, 37, and 42 have been amended. Support for the present amendments may be found in, for example, paragraph 57 of the originally filed specification and thus no new matter is being added by any of the present amendments.

Claims 1-5, 7, 8, 15-18, 20-24, 35-40, 42, and 44 are patentable over Kochi et al. (US PGPUB 2002/0179812) at least because Kochi fails to disclose determining a cross sectional dimension of an intermediate section of a measured structural element in response to a first and second distance

Kochi discusses creating stereoscopic images by scanning a specimen from different directions at different tilt angles and aligning the resulting images using rectifying parameters and a reference point common to the multiple images. *Id.*, paragraphs 0075 and 0109-0111. However, Kochi generally fails to disclose measurements of any kind, and in particular fails to mention measurements of a relationship between a certain point and traverse section of a measured structural element as required by the present claims. In the Final Office Action dated March 25, 2009 (hereinafter “Final Office Action”), Examiner states that “using rectifying parameters is the same as using the relationship between two points on a wafer (measured and reference) because the parameters will determine a relationship since it [Kochi] will have to correct the relationship” (Final Office Action, page 8) and thus infers that the determination of a distance between a certain point and a first or section traverse section of a measured structural element as recited in claim 1 is inherent in the alignment process of Kochi. Applicants respectfully disagree and point out that an alignment is not analogous to a determination of a distance between two points and that Kochi merely teaches the manipulation of images with regard to a common reference point in order to generate a stereoscopic image without making any determination of distances between two points present on a specimen. Furthermore, even if Examiner’s inference were accurate, Kochi still fails to disclose determining the cross sectional dimension of the intermediate section of the measured structural element in response to the first and second distances as recited in claim 1.

Thus, for at least the reasons provided above, Kochi fails to disclose each and every element of claim 1. Therefore, claim 1 is not anticipated by Kochi. Independent claims 15, 37,

and 42 include elements similar to those recited in claim 1 and are not anticipated by Kochi for at least the same reasons as claim 1. Claims 2-5, 7, 8, 16-18, 20-24, 25-40, and 44 depend directly or indirectly from claims 1, 15, and 42, respectively, and are not anticipated by Kochi at least by virtue of this dependency.

Claims 6, 9-14, 26, and 28 are patentable over Kochi in view of Takane at least because Takane fails to overcome the deficiencies of Kochi

Claims 6, 9-14, 26, and 28 depend directly or indirectly from claims 1 and 15 and are patentable over Kochi for at least the reasons provided above with regard to claims 1 and 15. Takane is cited for providing various features of dependent claims 6, 9-14, 26, and 28 which are not included in Kochi. Whether or not this is true, Takane fails to overcome the above noted deficiencies of Kochi. Therefore, the combination of Kochi and Takane fail to teach or suggest each and every element of claims 6, 9-14, 26, and 28 and as such, claims 6, 9-14, 26, and 28 are patentable over Kochi in view of Takane.

Claims 19 and 41 are patentable over Kochi at least because the knowledge of a person of ordinary skill in the art fails to overcome the deficiencies of Kochi

Claims 19 and 41 depend directly or indirectly from claims 15 and 42 and are patentable over Kochi for at least the reasons provided above with regard to claims 1 and 15. Examiner states that it would have been obvious to a person of ordinary skill in the art to prevent the electron beam from illuminating the measured structural element as recited in claims 19 and 41. Even if Examiner's statement is true, it still fails to overcome the above noted deficiencies of Kochi. Therefore, claims 19 and 41 are patentable over Kochi.

Claims 27 and 29-32 are patentable over Kochi in view of Muckenhirn at least because Muckenhirn fails to overcome the deficiencies of Kochi

Claims 27 and 29-32 depend directly or indirectly from claim 15 and are patentable over Kochi for at least the reasons provided above with regard to claim 15. Muckenhirn is cited for teaching various features of dependent claims 27 and 29-32. Whether or not this is true, Muckenhirn fails to cure the deficiencies of Kochi with respect to independent claim 15. Therefore, because claims 27 and 29-32 depend from claim 15, the present claims are patentable over Takane in view of Muckenhirn.

For at least the foregoing reasons, the present claims are patentable over the cited references. If there are any additional fees due in connection with this communication, please charge Deposit Account No. 19-3140.

Respectfully submitted,

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